



KAPLAN KIRSCH ROCKWELL

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July 25, 2012

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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Chelsea Property Owners – Abandonment – Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY*
STB Docket No. AB-167 (Sub-No. 1094)A

Dear Ms. Brown:

Please find enclosed an Amendment to the Trail Use Agreement ("TUA") between CSX Transportation, Inc. ("CSX") and the City of New York (the "City") for filing in the above-referenced proceeding. The TUA concerns an elevated railway viaduct with highway-railroad grade separation structures and street-level railway improvements known collectively as the "Highline" and located in New York City, New York. The Amendment comes as a result of CSX's recent donation to the City of that portion of the Highline known as the Hudson Yards Highline Segment (the "Segment"). Although the Segment, including an associated spur track situated over 30th Street and 10th Avenue, is already subject to the TUA, the TUA as originally executed and filed with the STB on November 29, 2005 did not contemplate the Segment's donation and contribution to the City. CSX and the City have accordingly amended the terms of the TUA to address the change in ownership.

In addition, I am enclosing an updated Statement of Willingness to Assume Financial Responsibility from the City that includes reference to the Segment's associated spur track, also for filing in the above-referenced proceeding.

Sincerely,

Charles A. Spitulnik
Counsel for New York City Economic Development Corporation

Enclosure

cc: All Parties of Record

Attorneys at Law
Denver • Washington, DC

Kaplan Kirsch & Rockwell LLP
1001 Connecticut Ave., N.W., Suite 800
Washington, DC 20036
tel: (202) 955-5600
fax: (202) 955-5616
www.kaplankirsch.com

Statement of Willingness To Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, the City of New York, a municipal corporation, (Interim Trail User) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by CSX Transportation, Inc. The property, known as West 30th Street Secondary Track and also known as the Highline, extends from railroad milepost 11.33 near 75-95 Gansevoort Street and runs northerly and westerly to railroad milepost QCW 10, near 547-55 West 34th Street and the West 34th Street streetbed, identified as Line Code 4225 in the records of the United States Railway Association and identified as Section 2, Block 82204, Lot 11 on the Tax Map for the Borough of Manhattan, a distance of 1.53 miles in the County and State of New York, and includes that certain spur track located approximately midblock on 30th Street between 10th and 11th Avenues and extending eastward towards 10th Avenue. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-167 (Sub No. 1094).


Maps of the property depicting the right-of-way are attached.

The City of New York acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board.

THE CITY OF NEW YORK

Approved as to form:

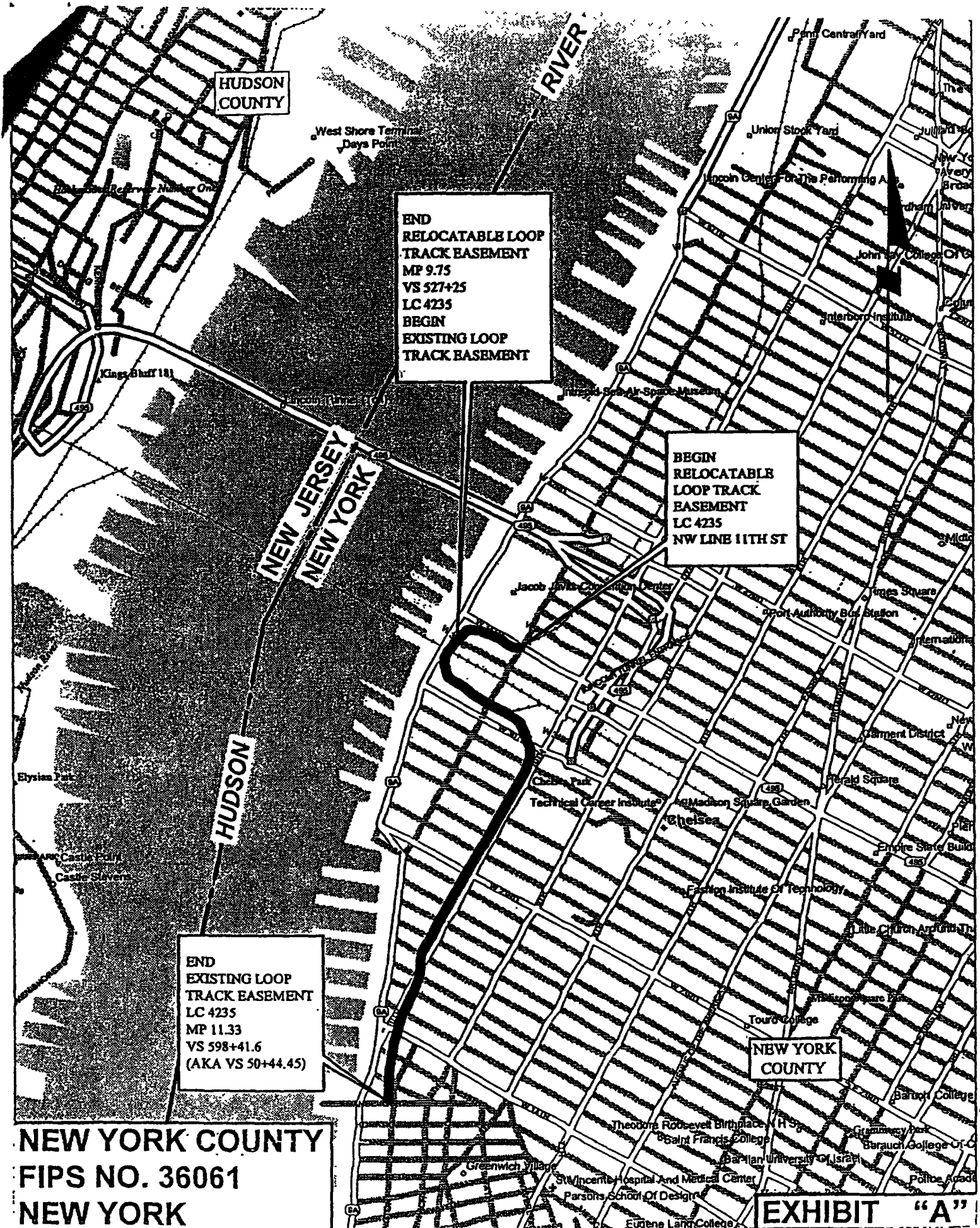
By:


Acting Corporation Counsel

By:

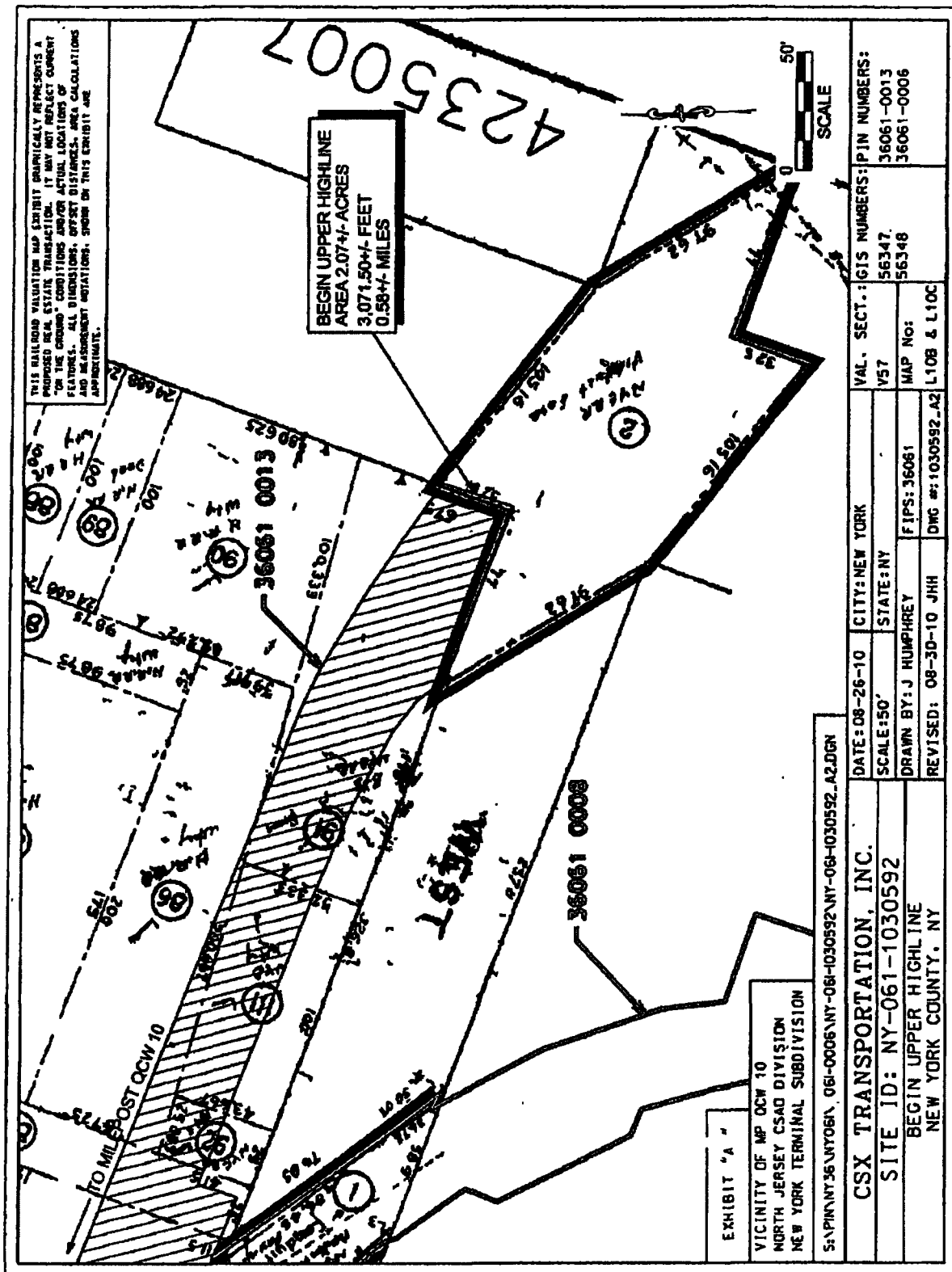

Name: Robert K. Steel

Title: Deputy Mayor for Economic
Development



NEW YORK COUNTY
FIPS NO. 36061
NEW YORK

EXHIBIT "A"



AMENDMENT TO TRAIL USE AGREEMENT

THIS AMENDMENT TO TRAIL USE AGREEMENT (this "Amendment"), made as of the 11th day of July, 2012, by and between **CSX TRANSPORTATION, INC.**, a Virginia corporation whose mailing address is c/o CSX Real Property, Inc., 6737 Southpoint Drive South, Jacksonville, Florida 32216-6177 ("CSXT"), and **THE CITY OF NEW YORK**, a municipal corporation having its principal place of business at City Hall, New York, New York 10007 (the "City").

WITNESSETH:

WHEREAS, the City and CSXT executed and delivered a Trail Use Agreement dated as of November 4, 2005 (the "TUA"), respecting an elevated railway viaduct with highway-railroad grade separation structures and street-level railway improvements known collectively as the "Highline" or the "West 30th Street Secondary Track" in New York City, New York, extending from 75-95 Gansevoort Street and running northerly and westerly to near 547-55 West 34th Street and the West 34th Street streetbed, identified as Line Code 4225 in the records of the United States Railway Association (the "Viaduct"); and

WHEREAS, simultaneously with its execution and delivery of the TUA, CSXT executed and delivered by way of donation of the Highline and Viaduct to the City, a Quitclaim Deed to that portion of the Highline which extends from 75-95 Gansevoort Street to the northern side of West 30th Street west of Tenth (10th) Avenue and that part of a spur track which is situated over 30th Street and (by overstreet bridge) 10th Avenue (the "Southern Highline Segment"), and a Bill of Sale covering the Viaduct within the Southern Highline Segment; and

WHEREAS, by Quitclaim Deed of even date herewith, CSXT is donating to the City that portion of the Highline which extends from the northern side of West 30th Street west of Tenth (10th) Avenue to near 547-55 West 34th Street and the West 34th Street streetbed, including, without limitation, that certain spur track located approximately midblock on 30th Street between 10th and 11th Avenues and extending eastward towards 10th Avenue (the "Spur") (collectively, the "Hudson Yards Highline Segment"), and by Bill of Sale of even date herewith, CSXT is donating to the City that portion of the Viaduct within the Hudson Yards Highline Segment; and

WHEREAS, both the Southern Highline Segment and the Hudson Yards Highline Segment and the Viaduct contained therein are already subject to the TUA, but the TUA did not contemplate the donation and contribution of the Hudson Yards Highline Segment to the City; and

WHEREAS, by License Agreement dated 26 May 2009, the City through its Department of Recreation and Parks ("NYC Parks") granted a license (the "Parks License") to The Friends of the High Line, Inc. ("FHL"), a New York not-for-profit corporation, to permit FHL to assume certain responsibilities for the alteration, modification and improvement of the Southern Highline Segment and to aid the City in the Highline's operation as a public amenity, and by License Agreement dated 3 January 2012 by and between CSXT as licensor and the City and FHL as co-licensees, the performance of environmental investigation was licensed on the Hudson Yards

Highline Segment, and by Amendment to License Agreement dated as of June 20, 2012, the filming of a television show was licensed on the Hudson Yards Highline Segment;

WHEREAS, the parties hereto desire to modify the TUA to accommodate the donation and contribution of the Hudson Yards Highline Segment to the City;

NOW, THEREFORE, for and in consideration of the mutual agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, CSXT and the City covenant and agree as follows:

1. Definitions. Capitalized terms and phrases not otherwise defined herein shall have the meanings for such capitalized terms and phrases as are set forth in the TUA dated November 4, 2005.

2. Relocation. Paragraphs 2(a), 2(b), 2(g)(ii)(B), and Exhibit E are deleted in their entirety.

3. Public Space Use. In Section 2(c), the penultimate sentence on page 6 of the Agreement commencing "Any requirement or condition herein..." shall be deleted.

4. Rail Yards Use. Section 5(p), Rail Yards Use shall be amended and restated in its entirety as follows:

"Any portion of the Highline over or adjacent to the Eastern and Western Rail Yards north of West 30th Street may be improved, developed, operated, used or maintained for Public Space, in accordance with the Zoning Code of the City of New York, as the same may be amended from time to time. As set forth in the first WHEREAS clause of this Agreement, the Highline and the Viaduct both include the spur (the "Spur") running easterly, parallel to the northern border of West 30th Street, from the West 30th Street over-street bridge located west of 11th Avenue and east of Tenth Avenue, and terminating at Moynihan Station (formerly Penn Station and General Post Office building) at said building's rear façade on the east side of Tenth Avenue south of West 30th Street, and said Spur includes the over-street bridge ("Parcel 36," as hereinafter defined) at 10th Avenue and West 30th Street. Parcel 36 is shown as Parcel C-38 upon the Enlarged Plan, as set forth in that certain indenture dated July 2, 1929, by and between the City, as grantor, and The New York Central Railroad Company, as grantee, recorded in Liber 3736 Cp 8 et seq. The Spur is depicted on Exhibit A annexed to the Amendment to Trail Use Agreement dated July II, 2012. In the event that the City shall elect to demolish and/or relocate all or any part of the Spur, and gives notice to CSXT of such election, CSXT's cooperation under Section 2(c) hereof shall be deemed to include prior consent to the demolition and/or relocation of the Spur, provided that written notice of such demolition and/or relocation is given to the Surface Transportation Board ("STB") with reference to the CITU, and further provided that simultaneous notice be given to all parties participating in STB Docket No. AB-167 (Sub-No. 1094)A."

5. Exhibit Substitution. Exhibit E of and to the TUA is hereby replaced with Exhibit A attached hereto and hereby made a part hereof.

6. Notices.

Section 4 of the TUA ("Notices") is hereby amended to change the address for CSXT to:

CSXT Transportation, Inc.
c/o CSXT Real Property, Inc.
6737 Southpoint Drive South
Jacksonville, Florida 32216-6177
Attention: Stephen A. Crosby
Facsimile: (904) 633-4531

7. General Terms.

(a) Entire Agreement. The TUA as amended by this Amendment, and any exhibits or amendments which may be attached hereto from time to time, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be modified only by a writing executed by both parties. CSXT and the City specifically agree that they will not modify this Amendment, including the obligations described in the first sentence of Section 2(c) of the TUA or in Section 5(c) of the TUA or this Amendment, or terminate this Amendment, if any such modification or termination will adversely affect the rights of Chelsea Property Owners, Incorporated, or the owners of the properties encumbered by the Easements, the 1929 Agreements and the Property-Specific Easements, to seek enforcement of the obligations stated in the first sentence of Section 2(c) of the TUA as originally executed.

(b) Incorporation by Reference. The TUA, as amended by the parties hereto from time to time in accordance herewith, shall be incorporated by reference into any separate finance agreement or other related documents between the parties hereto, and such incorporation shall include all amendments and exhibits hereto, even if made or attached subsequent to the date of this Amendment.

(c) No Third Party Beneficiaries. Except as otherwise provided herein, nothing contained in the TUA as amended by this Amendment, in any provision or exhibit hereof, or in any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person. Notwithstanding the foregoing, the City and CSXT specifically agree that and any of the owners of the properties encumbered by the Easements, the 1929 Agreements, and the Property-Specific Easements, may seek enforcement of the obligations stated in the first sentence of Section 2(c) of the TUA, which provisions are for the benefit of those owners, solely in the event that the portion of the Highline south of West 30th Street is no longer used for Public Space or if the portion of the Highline on the particular owner's property is no longer used for Public Space. Furthermore, notwithstanding the first sentence of this Section 7(c), the City and CSXT specifically agree that Chelsea Property Owners, Incorporated ("CPO") may seek enforcement of the obligations stated in the first sentence of Section 2(c) of the TUA, which provisions are for the benefit of CPO, solely in the event that the portion of the Highline south of West 30th Street is no longer used for Public Space.

(d) Interpretation. Neither the form of this Amendment, nor any provision herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

(e) Parties. Wherever used herein, the terms "CSXT" and "the City" shall be construed in the singular or plural as the context may require or admit, and shall include the permitted successors and assigns of such parties.

(f) Severability. This Amendment is executed under the current interpretations of applicable federal, state, county, municipal and local statutes, ordinances and laws. However, each separate division (section, paragraph, clause, item, term, condition, covenant or agreement) hereof shall have independent and severable status for the determination of the legality thereof. If any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

(g) Governing Law. This Amendment shall be construed and governed under the laws of the State of New York, exclusive of the conflicts of laws provisions. It is the particular intent of the parties that all waiver, release and indemnity obligations provided herein, including those relating to punitive and/or exemplary damages, shall be enforceable to the extent permitted by law.

(h) Assignability.

(i) The City may assign the TUA as amended by this Amendment or transfer any right or interest herein, or further amend the Parks License, subject to any applicable STB approval, without the prior written consent of CSXT; provided that no such assignment or transfer shall relieve the City of its obligations under the TUA as amended by this Amendment or any other document or instrument between the City on the one hand and CSXT or any CSXT Affiliate (as defined in Section 2(g) of the TUA) thereof on the other, and provided that the assignee assumes the obligations of the City under this Agreement. CSXT agrees that the Parks License, as amended to the date of this Amendment, is a permitted delegation or other transfer of certain of the City's rights and interests under the TUA, as such rights and interests are described in the Parks License.

(ii) CSXT may, in its discretion, assign the TUA as amended by this Amendment in whole or in part, or any rights or interests of CSXT hereunder, to any CSXT Affiliate or any entity in connection with any merger or consolidation of CSXT or any CSXT Affiliate thereof, and in such event such CSXT Affiliate shall be deemed to assume the obligations of CSXT hereunder.

(i) Time is of Essence. Time is of the essence in the performance of each party's obligations under this Amendment.

(j) Incorporation of Exhibits. All exhibits attached to this Amendment are incorporated by this reference and made a part of the TUA for all purposes.

(k) Multiple Counterparts. This Amendment may be executed in several counterparts each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

(l) WAIVER OF JURY TRIAL. CSXT AND THE CITY EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS, RIGHTS OR OBLIGATIONS OF EITHER PARTY ARISING OUT OF OR RELATED IN ANY MANNER TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT OR ANY CLAIMS OR, DEFENSES ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO AND ACCEPT THIS AGREEMENT.

(m) Authorization. CSXT and the City each represent and warrant to the other parties hereto that each has obtained all necessary corporate approvals authorizing the execution and delivery of this Amendment, and that the execution and delivery of this Amendment does not violate the articles of incorporation or bylaws of such corporation, and will not constitute a material breach of any contract by which such corporation is bound.

(n) Recording. This Amendment shall be recorded, by CSXT, at the City's sole cost and expense, in the Office of the Recorder of Deeds in and for the City of New York.

(o) Termination. The Agreement shall terminate upon the earlier of (i) issuance of an order of abandonment by the STB for the (entire) Highline; and (ii) reinstitution of rail service on the Highline.

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EXECUTED as of the date first herein written.

Witness:

Susan C. McMiller
Elizabeth A. Etal

CSX TRANSPORTATION, INC.

By: 

Name: Stephen A. Crosby

Title: Designated Signatory; President, CSX Real
Property, Inc.

Witness:

THE CITY OF NEW YORK

By: _____

Name: Robert K. Steel

Title: Deputy Mayor

Approved as to form:

By: _____

Name:

Acting Corporation Counsel

EXECUTED as of the date first herein written.

Witness:

CSX TRANSPORTATION, INC.

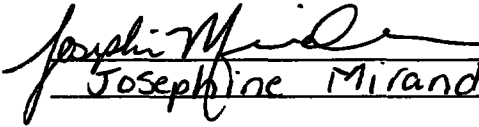
By: _____

Name: Stephen A. Crosby

Title: Designated Signatory; President, CSX Real
Property, Inc.

Witness:

THE CITY OF NEW YORK




Josephine Miranda

By:  _____

Name: Robert K. Steel

Title: Deputy Mayor

Approved as to form:

By:  _____
Name: James McSpiritt
Acting Corporation Counsel

STATE OF FLORIDA)

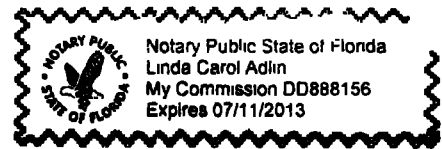
COUNTY OF DUVAL) ss.

On the 20th day of June in the year 2012 before me, the undersigned, personally appeared Stephen A. Crosby, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Linda Carol Adlin

Notary Public

My Commission Expires:



STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

On the ____ day of _____ in the year 2012 before me, the undersigned, personally appeared Robert K. Steel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

My Commission Expires:

STATE OF FLORIDA)

COUNTY OF DUVAL) ss.

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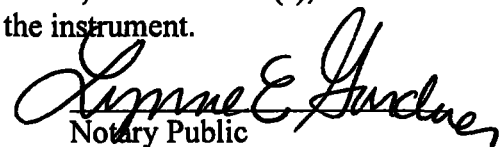
Notary Public

My Commission Expires:

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss:

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Notary Public

My Commission Expires: 2-18-14

Lynne E. Gardner
Notary Public, State of New York
NO 01GA4992059
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires 2-18-14

Exhibit A

